

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DRESSER-RAND COMPANY,

*Plaintiff,*

v.

PETRÓLEOS DE VENEZUELA, S.A. *et al*,

*Defendants.*

**No. 19-cv-02689-LLS**

**REPLY DECLARATION  
OF ERIK SCHERZER**

ERIK SCHERZER, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Head of Credit and Collections in the Americas for Dresser-Rand Company ("Plaintiff"). I submit this Reply Declaration in further support of the Motion submitted by Plaintiff, pursuant to Fed. R. Civ. P. 54(b), for Entry of Final Judgment against defendant PDVSA Petróleo, S.A. ("Petróleo").

2. I have been employed by Plaintiff since January 2004. My responsibilities as Head of Credit and Collections in the Americas for Plaintiff include, among other things, overseeing the internal distribution of payments received from Plaintiff's customers, generally monitoring third-party payment obligations owed to Plaintiff, and sending initial and final demands for payments on behalf of Plaintiff.

3. This Declaration is based upon my review of the books and records relating to the agreements at issue in the above-captioned matter, my familiarity with the company's practices and procedures, and my personal involvement with the transactions discussed herein. As such, I hereby certify that each of the documents attached hereto comprise a full and complete copy of documents created at or near the time they are dated and have been kept by the company in the ordinary course of its business.

Unrestricted

4. On or about January 20, 2017, Plaintiff, as Initial Noteholder, entered into a Note Agreement (“Note Agreement”) with Petróleo, as Guarantor, and Petróleos de Venezuela S.A. (“PDVSA,” and together with Petróleo, “Defendants”), as Issuer, pursuant to which PDVSA agreed to pay certain amounts reflected in a Note dated January 20, 2017 (“Note”). A true and correct copy of the Note is attached hereto as Exhibit 1.

5. Pursuant to Article VI of the Note Agreement, Petróleo guaranteed PDVSA’s payment obligations (“Guarantee”). At all relevant times, I maintained an active role in enforcing Defendants’ obligations under the Note and Note Agreement. A true and correct copy of the Note Agreement is attached hereto as Exhibit 2.

6. Under the terms of the Note and Note Agreement, Defendants agreed to pay Plaintiff (i) the principal sum of \$119,645,069.70, (ii) with interest on the unpaid principal balance based on and computed on the basis of 365 days, at a rate per annum equal to 6.5%, payable quarterly on each day described on the payment schedule in the Note, and (iii) on any overdue payment of principal and any overdue payment of interest, default interest, payable on demand, based on and computed on the basis of 365 days, at a rate per annum equal to 8.5% (“Default Interest”).

7. Based upon the payment schedule set forth in the Note, PDVSA was required to make quarterly interest payments for one year beginning on April 20, 2017. Thereafter, PDVSA was required to make quarterly principal payments in addition to quarterly interest payments. *See* Ex. 1, Ex. A.

8. I was responsible for ensuring that PDVSA and/or Petróleo paid Plaintiff on the contractually-mandated repayment dates. In this regard, I regularly corresponded with Defendants regarding the status of their payments.



9. PDVSA only made the first two (2) quarterly interest payments, and did not make any further payments owed under the Note and Note Agreement. In particular, on April 20, 2017, PDVSA made the first quarterly interest payment in the amount of \$1,917,599.06. On July 20, 2017, PDVSA made the second quarterly interest payment in the amount of \$1,938,905.72.

10. Defendants defaulted in their payment obligations under the Note and Note Agreement by failing to pay, on October 20, 2017, the third quarterly interest payment in the amount of \$1,960,212.37.

11. On February 14, 2019, Plaintiff sent Defendants a Notice of Default informing each of them that they were in breach of their payment obligations under the Note and Note Agreement.

12. After Defendants failed to respond to Plaintiff's Notice of Default, Plaintiff sent Defendants a Notice of Acceleration on February 21, 2019, declaring the entire principal balance of the Note, together with all applicable interest, to be due and payable in full.

13. As of May 1, 2020, the amount due to Plaintiff under the Note Agreement is \$149,517,709.96. Attached as Exhibit 3 is a spreadsheet setting forth the calculation of the amount due under the Note Agreement as of May 1, 2020.

14. The Default Interest reflected in Ex. 3 was calculated by applying the default interest rate (8.5% per annum) set forth in the Note Agreement to the unpaid amounts starting at the time of Defendants' initial missed payment, which was October 20, 2017.

15. Accordingly, based upon this Court's Order, Plaintiff is entitled to a monetary judgment against Petróleo in the amount of \$149,517,709.96, consisting of the outstanding principal of \$119,645,069.70, outstanding interest of \$12,650,827.12, and Default Interest of \$17,221,813.14 as of May 1, 2020. Pursuant to the Note Agreement, Default Interest continues to accrue on the amount owed until paid in full.

16. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 27, 2020

  
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ERIK SCHERZER